

After reviewing the record and considering the arguments of the parties, the Appeals Board finds that claimant has failed to meet his burden of proving that he sustained personal injury by accident arising out of and in the course of his employment with respondent. The weight of the credible evidence supports a conclusion that claimant's back injury was not work related. Claimant admitted to supervisors on two (2) occasions

that the accident was not work related. In addition, claimant's description of the accident does not correspond with the testimony of claimant's co-worker who was with the claimant at the time of the alleged accident. The fact that the claimant described his injury as work related to his family physician the day following the alleged accident does not, in the opinion of the Appeals Board, overcome the overwhelming evidence to the contrary.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the February 7, 1995, Order of Administrative Law Judge John D. Clark should be, and the same is hereby, reversed and preliminary benefits are hereby denied.

IT IS SO ORDERED.

Dated this ____ day of April 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Frances A. Hartman, Wichita, KS
Robert G. Martin, Wichita, KS
John D. Clark, Administrative Law Judge
George Gomez, Director